

ULI Land Use Policy Forum Report

Barriers and Solutions to Land Assembly for Infill Development

**Prepared by Stella Tarnay
Washington, D.C.**

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**Urban Land
Institute**

About ULI

ULI—the Urban Land Institute is a nonprofit education and research institute that is supported by its members. Its mission is to provide responsible leadership in the use of land to enhance the total environment. ULI sponsors education programs and forums to encourage an open, international exchange of ideas and sharing of experiences; initiates research that anticipates emerging land use trends and issues and documents best practices; proposes creative solutions based on that research; provides advisory services; and publishes a wide variety of materials to disseminate information on land use and development. Established in 1936, ULI has more than 21,000 members in 60 countries representing the entire spectrum of the land use and development disciplines.

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President

ULI Land Use Policy Forum Reports. ULI is in the forefront of national discussion and debate on the leading land use policy issues of the day. To encourage and enrich that dialogue, the Institute holds land use policy forums at which leading experts gather to discuss topics of interest to the land use and real estate community.

The findings of these forums serve to guide and enhance ULI's program of work. The Institute produces summaries of these forums in its Land Use Policy Forum Reports series, which are available on ULI's Web site at www.policypapers.uli.org. By holding these forums and publishing summaries of the discussion, the Institute hopes to increase the body of knowledge that contributes to the quality of land use policy and real estate development practice throughout the country.

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Introduction

In February 2004, the Urban Land Institute convened a panel of experts at its offices in Washington, D.C., for a one-day forum titled, “Barriers and Solutions to Land Assembly for Infill Development.” The purpose of the forum was to identify and discuss significant public, regulatory, and market-based barriers to land assembly and infill development, and to suggest strategies for overcoming them. ULI was also interested in identifying prospective case studies that illustrate the dynamics of the assembly and infill process, and that present solutions. These will be published in an upcoming book.

The forum was convened in cooperation with the U.S. Department of Housing and Urban Development (HUD) and was chaired by Maureen McAvey, ULI’s senior resident fellow for urban development. Forum participants included a diverse professional group of for-profit and nonprofit developers, builders, investors, public sector representatives, legal experts, smart growth advocates, and academics.

Forum Summary

The day began with a welcome and opening remarks by forum chair Maureen McAvey (and HUD host Edwin Stromberg). Panel experts then gave a series of presentations on legal, legislative and regulatory, financing, implementation, and planning issues related to land assembly and infill development. Each presentation was followed by an exchange of ideas on barriers and opportunities within that arena. The forum concluded with a discussion of key themes and potential case studies for further consideration.

Legislative and Regulatory Issues

Discussion of legislative and regulatory issues centered on the role of local government in land assembly and infill activities, and state enabling legislation. Starting with a focus on vacant and abandoned properties in weak market cities, the conversation expanded to touch upon issues of infill development of underused suburban land. Key points emerging from the discussion are listed below. Their evolution within the conversation follows.

- In the public sector, vacant and underutilized land, once viewed as a liability, now is seen as an asset.
- Land assembly and infill development dynamics are best understood in the context of market, scale, regional, and project characteristics. These exist along a continuum.
- Outdated and inflexible zoning is a barrier to infill development.
- A lack of available land is a barrier to infill development.
- The existence of multiple jurisdictions extending over one piece of land is a barrier to infill development.
- Land development functions and revenue functions of local government often work at cross purposes when it comes to redevelopment. Accounting systems inhibit the reuse of vacant land.
- Strategic code enforcement for blighted properties is an alternative to takings by eminent domain.
- Many cities are adopting a market-based approach to infill development.
- Barriers and solutions to land assembly and infill development must be addressed at the local level. State statutory support for local innovation is a powerful and critical tool.
- Inclusionary zoning without compensatory density bonuses may hinder rather than promote affordable housing production.
- Lengthy entitlement and permitting processes are a barrier to infill development.
- Local and state governments are facing the worst fiscal crisis since the Great Depression and evidence suggests that it will only get worse. City staffs are overextended and underpaid.

- The cleaning, preparation, and packaging of vacant land for development is both a necessity and a resource burden for many cities.
- Fiscally stretched cities tend to make land use decisions based on tax revenue considerations rather than on sound land planning principles.
- The commitment of fiscal and staff resources for review and amendment of zoning and permitting processes is a barrier to reform.
- Emphasis on Community Development Block Grant (CDBG) and HUD Home Investment Partnership Program (HOME) funding for urban redevelopment may be counterproductive. Municipal code enforcement agencies and housing authorities shape redevelopment in most urban areas.
- Political leadership is critical. It must be supported by sound management and technical capacity.

John Kromer, senior consultant for the Fels Institute of Government in Philadelphia, Pennsylvania, introduced the topic of legislative and regulatory issues related to land assembly, drawing on his experience as director for housing in Philadelphia in the 1990s, his research for the Center on Urban & Metropolitan Policy at the Brookings Institution, and statewide conferences he has convened on the topic of vacant land and assembly in Pennsylvania. He noted the shift in attitude toward vacant land in many American cities: it went from being seen as a liability in the 1980s, to being perceived as an asset in the 1990s. Until recently, municipal governments did not own the majority of vacant land in their jurisdictions. Because cuts in federal funds made it difficult to respond, and because the unfortunate history of urban renewal was still fresh in residents' memory, cities like Philadelphia took a "hands off" approach, he noted. But during the 1980s, progressive mayors began to view vacant land in the context of their economic development policies, and in the 1990s the smart growth movement brought home the connection between suburban sprawl and undeveloped urban assets.

Despite this new attitude, many cities are struggling to manage their newly found resource. Kromer introduced fellow panelists to a report published in 2002 by the Brookings Institution's Center on Urban & Metropolitan Policy, which attempts to address some of the challenges faced by cities in relation to their vacant, abandoned, and underused land, and to recommend actionable steps for successful development. "Seizing City Assets: Ten Steps to Urban Land Reform," authored by Paul C. Brophy and Jennifer S. Vey (www.brookingsinstitute.edu), recommends ten steps toward this goal:

Ten Steps to Urban Land Reform

Know your territory. Inventory the properties, know the market value and the zoning for properties, determine the ownership, and make the data publicly available.

Develop a citywide approach to redevelopment. Categorize neighborhood types (for instance, stable, emerging, distressed) to determine appropriate steps.

Implement neighborhood plans in partnership with community stakeholders.

Make government effective. Create an efficient process for acquisition, disposition, and redevelopment.

Create a legal framework for sound development. Strengthen the local government's authority to put underused property back on the market.

Create marketable opportunities. Make sites large enough for redevelopment through clustering.

Finance redevelopment. Offer incentives such as short-term financing, subsidies, or tax benefits to attract private investment and development.

Build on natural and historic assets. Market the community as an appealing place to do business.

Be sensitive to gentrification and relocation issues. Aim to create mixed-income neighborhoods that are both economically and socially diverse.

Organize for success. Recognize that success requires cohesive partnerships at all levels of government, and among all stakeholders. While vacant land redevelopment is a local responsibility, success hinges in part on state laws and regulations, and federal assistance.

The authors intended to demonstrate a proactive approach that by state and municipal governments could take to stimulate investment in their jurisdictions. While the ten steps may be basic and self-evident, Kromer observed, “Many cities are not pursuing policies based on them. For example, many cities lack an accurate and accessible inventory of vacant properties and don’t have a parcel base property line map that can be used for neighborhood planning.” And he added, “The first thing that developers and investors are interested in when considering development projects in cities is ‘what’s available, who owns it, what’s the tax status, and how can I get it?’ Cities that don’t have this basic information will not be able to market the city effectively.”

Along with the first step of “know your territory,” the Brookings report recommends that cities take a citywide approach to redevelopment. Often, this second step means looking at neighborhoods and categorizing them in terms of housing markets rather than target or service areas. Kromer noted that in Philadelphia, under Mayor Street’s Neighborhood Transformation Initiative, the city created a typology of five neighborhood markets and designed associated land use strategies to respond to pertinent issues. In the distressed markets, now called ‘reclamation markets,’ housing values were well below those citywide. Distressed market neighborhoods were characterized by older housing, deteriorated conditions, high vacancy rates, and lots of vacant properties. In such market areas, emphasis was put on blight removal, demolition, clearance, environmental remediation, and very selective development to stimulate market activity. Kromer pointed to the work of fellow panelist Rose Gray, executive director of Asociación De Puertorriqueños (ADP) in Philadelphia, Pennsylvania, whose projects in the 1990s are a very good example of building up distressed markets through a series of developments on cleared land. Washington, D.C., has also characterized neighborhoods by three market typologies: stable, emerging/transitional, and distressed.

Kromer noted that step three of the Brookings Institution report encompassed the necessary tension between market-oriented planning and community participation. Municipalities undertaking community visioning processes must recognize, for example, that every neighborhood cannot realistically expect to have a recreation center and a supermarket, and should focus the discussion on realistic market objectives. Kromer showed a brownfield development site in Pittsburgh, a site that the city redeveloped through a stakeholder partnership. Further steps of the Brookings report grew out of market and fiscal realities facing cities, and recommended actionable initiatives based on these conditions. For example, in response to a lack of state and federal funding for vacant property redevelopment, cities can create tax increment financing and other incentives to attract development.

Given the complex array of issues that cities face when taking on redevelopment of vacant and underused land, Kromer asked forum panelists to consider: “What do you need to do to get organized to market and develop vacant properties, and what do you need to in order excel at that?”

Kromer then moved on to broader regional considerations. In 2002 and 2003, he convened two statewide conferences in Camp Hill, Pennsylvania, on the theme of vacant properties. Participation was unexpectedly high, with representatives from cities and towns in every region of the state attending. The discussion across jurisdictions proved very effective, and generated ideas for new strategies, he reported. The conference first was cosponsored with Ten Thousand Friends of Pennsylvania, a statewide smart growth advocacy organization. Kromer handed out the briefing book from the second conference, “Vacant Property in Pennsylvania Cities and Towns: New Challenges and Opportunities for 2004,” sponsored by the Fels Institute of Government, the Housing Alliance of Pennsylvania, and the Pennsylvania Department of Community and Economic Development. It contained legislation that was introduced following the first conference, when a number of housing and smart growth advocates built relationships with the state’s legislative staff.

Kromer also distributed copies of “Serious About Neighborhoods: Ten Success Strategies for Philadelphia’s Residential Communities” (www.neighborhoodrecovery.com), a paper he authored, which describes a set of strategies for vacant property development for that city. He noted that issues faced by Philadelphia relating to land development have included, until recently, a lack of a parcel-based map, a large supply of vacant housing authority lots, and the need to get such properties land-banked and prepared for circulation and development. He noted that in contrast to Philadelphia, the city of Baltimore and its housing authority have packaged nearly 1,000 properties for bulk transfer, suggesting that municipal exchange of ideas and practices would be helpful to progress.

Kromer argued that the barriers and solutions related to land assembly for infill development must foremost be addressed at the local level. Enacting state legislation is critical for local municipalities to be able to increase the efficiency of the local public taking process, he added, whether it be through tax foreclosure of eminent domain or other mechanism. He suggested that too much focus related to vacant property issues has been placed on federal programs and their administrative agents, specifically HUD’s CDBG and HOME programs. While these are important funding sources, Kromer said, he suggested that two local municipal agents—namely, the local code enforcement agency and the housing authority—play far more important roles in determining the fate of urban land. He noted that housing authorities often have large operating and development funds, and have opportunities to engage in mixed-income ventures as well as to issue housing vouchers.

He pointed to the leadership shown by Mayor Street in Philadelphia, who committed \$300 million in funds to the Neighborhood Transformation Initiative, and made development of vacant and underused properties in his “top political priority.” Mayor Martin O’Malley of Baltimore similarly committed to acquiring and dealing with 5,000 vacant properties in that city through the Project 5,000 program. “But that really has to be followed by progressive management at the local level,” he reiterated, whether by municipal agencies or the private and nonprofit organizations that deal with vacant property development.

Kromer asked Allan Mallach, research director at the National Housing Institute in Roosevelt, New Jersey, to present recent legislative initiatives related to vacant property redevelopment in New Jersey. Kromer also asked fellow panelists to consider what additional, or other, steps will be needed to take forward the agenda of successful land assembly and infill development in urban areas.

Allan Mallach presented and distributed copies of the New Jersey “Summary of Abandoned Properties Rehabilitation Act P.L.2003, c.210.” This legislation became law in early 2004, and was the result of a collaborative effort lead by the state’s CDC association. The goal was to reform New Jersey laws dealing with the acquisition of abandoned properties for purposes of redevelopment. This legislation provided four key tools, as outlined by Mallach:

- It gives a clear and comprehensive definition of what constitutes abandoned property.
- It significantly restructures the tax foreclosure process, enabling municipalities to accelerate the process of acquiring such properties for redevelopment and making them available to appropriate parties.
- It provides for vacant property receivership, referred to as “possession,” allowing for a judicial process by which a municipality or designated agent can gain control of abandoned property through courts for the purpose of rehabilitation or sale to an appropriate end user.
- It makes “spot blight” eminent domain easier to use by municipalities on abandoned properties. The statute also requires that appraisers of such abandoned properties analyze the cost to rehabilitate or reuse the property according to zoning and planning municipal standards and the market value after rehabilitation. If the cost exceeds the market value, there is “rebuttable presumption that the value of the property, and the compensation due the owner is zero.”

Mallach also provided a matrix outlining a number of scenarios and how each of the four tools could be applied. For example, in the case that one or more abandoned buildings are in an area slated for a project by a CDC or developer and are not eligible for tax foreclosure, or tax foreclosure would take too long, the municipality may use the spot blight eminent domain tool 1) to create an abandoned property list; 2) to establish value; and 3) to take the properties. The CDC or developer may

then 1) enter into an agreement with the city under which the city will take properties and reconvey them to the CDC or the developer and 2) reimburse the city for costs of the taking, based on the value as provided in C.210 of the statute. The goal and final outcome are that the municipality is able to take the property and convey it to the CDC or developer for a project.

David Engle queried whether the tools described in the statute could be applied in cases of disputed ownership, such as the case of the JL Hudson building in Detroit, for which three parties had legitimate claim. In the Detroit case, it took a year and a half to clear up these claims and get the building. Would the New Jersey law speed up this process and allow public officials to get control of the property sooner? While nothing in the New Jersey statute deals with this scenario specifically, Mallach suggested that under the quick-take process of the statute, the municipality or entity that condemned the property could go to court, deposit the funds with the court, and get a judgment of title from the court, while the claimants can then fight out their claims within the court system. Mallach noted that a number of concepts in the statute, which are new to New Jersey case law, and arguably new to all. These will be questions and challenged in the field.

Other panelists pointed to structural governmental barriers that get in the way of land acquisition and redevelopment. For example, both city and county agencies can have jurisdiction over the same piece of property, as in Atlanta. There, tax assessment and tax liens are handled by the county, while redevelopment activities related to that same piece of land are handled by the city. In Pittsburgh, both city and county governments have independent powers to sell tax liens and foreclose. In New Jersey at least, Mallach noted, municipalities managed both the taxation process and development functions. But even in cities where these functions are handled under one municipal government, Kromer pointed out that an inherent conflict of interest can exist between revenue agencies and the city's development agency. "Many city revenue departments are unwilling to let go of properties with tax liens, even when collection is extremely unlikely or nonexistent," he observed.

James Kelly, executive director of Save a Neighborhood in Baltimore, Maryland, noted that municipal liens are often far higher than the market value of a given property, and city agencies are unwilling or unable to release the excess valuation. The Baltimore Department of Finance, for example, has an accounting system that will not allow officials to recognize the release of a lien, but will allow them to keep the excess debt. The system attaches debt to property and not to owners, and when owners disappear, the land hangs in administrative limbo. On the question of valuation, Kelly suggested that barriers arose from the lack of a legitimate market for the "shells" that these vacant properties are, making the usual process of comparable unworkable.

Forum chair Maureen McAvey asserted the need for political leadership when such complex issues and barriers characterize infill development. "Political leadership is an absolute essential that includes putting what is sort of an unpopular issue on the table. ...Not only do you need political leadership, but you also have to have technical strength under you, because a lot of this is nuts and bolts."

Kromer asked Kelly to address the issue of receivership and draw on his experience with taking of vacant property from negligent property owners for the purpose of redevelopment. Kelly noted that he will address these and related issues in an upcoming article in the *Journal of Affordable Housing Community Development Law*. For economically healthy neighborhoods with abandonment rates of less than 5 percent, the city of Baltimore has developed a code enforcement proceeding as an alternative to spot blight eminent domain. The traditional mechanism threatens noncomplying owners with jail, he noted, and has a high threshold of due process.

The alternative approach is tailored for getting at one or two properties without being threatening to the neighborhood, making the neglected property available to the private market for improvement. It has proven effective in cases of scattered site neglect, where, for example, an elderly resident has kept up with taxes but has been unable to maintain his or her property. "The code enforcement proceeding brings a special foreclosure proceeding into play, under which owners are given the opportunity to come forward and fix properties up." Should they be unwilling to do so, the city liquidates their interest, as well as the interest of all

mortgagees and judgment holders. “They’re going to have to make a choice between fixing it up or selling it quickly. What this ends up doing is throwing off a lot of deals.” Preidentified private developers are brought in to fix up and improve the property.

Daniel Konnor, director of infill land acquisition for John Laing Homes, in Van Nuys, California, spoke from the perspective of a market-rate homebuilder in Los Angeles. He noted that there is growing demand and pressure to develop housing on underutilized urban properties. “For homebuilders working in this environment, it’s not a matter of gaining access to vacant and abandoned properties—of which there are few in Los Angeles—but of acquiring and developing underutilized commercial or retail properties.” The barriers stem from outdated zoning and prohibitive time lags. Often, he noted, zoning for these types of properties has been frozen in place for 20, 30, or even 50 years. He pointed to a deal his company is considering in a pocket industrial area of Marina Del Rey. A pioneering developer who first identified it as an attractive site for housing invested several years and half a million dollars to get approval for a plan. In Pasadena, another developer spent three years getting the site of an underused grocery store rezoned to residential use. Konnor observed that it is not unusual for a developer to spend two years or more to gain approval for a general plan amendment or multiple variances for an outdated commercial area. This, he noted, is a major disincentive for the production of housing in metropolitan areas. He recommended that municipalities reexamine zoning plans regularly, and make adjustments based on the reality of urban development and demand.

Market time lags for infill projects are created by existing owners who are undecided about selling. Once a property is acquired, a common barrier faced by private developers is appraisal. In the Pasadena project, Konnor noted, “We simply could not get the land appraised for what we needed in order to avoid putting a ton of equity into the deal.” Many developers, he noted, would choose to invest in two greenfield sites instead.

Konnor also expressed concern about new inclusionary zoning ordinances for affordable housing now under discussion in Los Angeles. He argued that such public requirements, while addressing a very real problem faced by the city, would in practice drive down the production of housing and serve to drive prices up.

Engle concurred that Konnor’s characterization of the development climate represented the “new reality” for urban infill development. He noted a growing interest among homebuilders in solving problems related to infill housing, as demonstrated by the overflow of participants at an infill housing presentation he gave at the NAHB convention. “Because of new market dynamics and new municipal growth guidelines, many homebuilders are now looking for development opportunities on infill sites in urban areas, and they are desperate for solutions,” he said. Figuring out how to assemble land effectively on underutilized commercial and retail sites is one of their chief concerns. He also argued that the inclusionary zoning ordinance being considered in Los Angeles would prove to be unconstitutional and would be overturned as an illegal taking unless municipalities provide a density bonus as compensation.

Forum chair McAvey highlighted two emerging themes from the discussion. First, as panelists had noted, outdated, inflexible zoning and the regulatory environment that fosters it make the assembly and development of infill land daunting. “We have to think of a new age when it does not take five to seven years to get a site assembled, entitled, zoned, platted, and approved.” While acknowledging the need to protect rights, she suggested that municipalities would have to do better if they wanted to attract development. Second, she noted that the issue of land assembly for infill was relevant beyond the discussion of vacant and abandoned properties. She encouraged panelists to think more broadly and to consider the issues in a variety of urban and suburban contexts.

Gray drew on her experience in Philadelphia to highlight the cost barriers to urban infill development even when there is political will. A development forum hosted by Philadelphia’s Mayor Street, she noted, asked developers to identify incentives that would persuade them to build in that city. The mandate from the development community was: clean, assembled land; relocation of residents; a ten-year tax abatement; and no requirement for prevailing wage. While some of these criteria are flexible, the cumulative cost of meeting them “is astronomical,” she argued. In a weak-market city such as Philadelphia, fiscal conditions do not allow the mayor to sanction more than two or three such projects. The relocation issue also was one fraught with problems and controversy for municipal officials.

Mallach suggested a typology for thinking about assembly and infill along three continua of conditions and dynamics:

- Market conditions/environments—ranging from weak market environments such as those in Flint, Michigan, at one end to strong ones, such as those in Boston and Atlanta at the other.
- Size/scale—issues related to land assembly and infill development will vary widely depending on the size or scale of a project. Small, scattered site projects such as those described by Kelly in older neighborhoods have dynamics different from those being developed on large-scale commercial and industrial sites.
- The kind of infill—issues arising from infill development will differ based on the type of project and its goals. In Los Angeles, good design and planning criteria may suggest infill for increased density, while projects in Philadelphia and Baltimore may have the goal of reducing density for livable neighborhoods.

David Feehan, president of the International Downtown Association, based in Washington, D.C., queried his fellow panelists about the specific issue of bureaucratic inertia and municipal competency. Are they as much of a problem today as in past decades? Following general agreement from fellow panelists, Joseph Schilling, director of economic development for the International City/County Management Association (ICMA) in Washington, D.C., addressed the question from a local government perspective. “The context right now for state and local governments is that they are facing the worst fiscal crisis since the Great Depression.” Federal and state revenues are drastically reduced from the levels witnessed during previous years, he noted, and constitutional legal limitations circumscribe the ability of local governments to raise property taxes. “These pressures lead local governments to look at economic development as a means to raise revenues, not necessarily making decisions based on sound land use planning.”

Like Gray, he observed that even municipalities with political will lack resources and staffing, which severely limits their ability to undertake reform. Schilling described the pressures faced by code enforcement officials, for example. Staffs in municipal code enforcement departments are chronically overextended and underfunded, and are bombarded by simultaneous demands from city officials, the real estate community, and housing advocates. Schilling

observed that in most city planning and development departments, 80 percent of funding goes to the processing of new development, rather than building code enforcement and preservation of existing building stock. The ICMA is working with its members to help create a more balanced approach.

Schilling pointed to a number of bright spots in local innovation. A number of small cities such as Petaluma, California, have started to adopt form-based codes. In Milwaukee, Wisconsin, former planning director Peter Park led a multiyear effort to examine zoning codes and processes and update them. Dealing with such properly can take an extraordinary commitment of staff and resources. “That took three to four years of city staff and consultants moving away from what they normally do, which is issue permits, to spend time to go through these archaic layers of zoning and building processes.” Given the fiscal climate that local governments must operate in, Schilling reiterated that even ordinary operations, let alone major innovation initiatives, are difficult for municipalities to envision. Forum chair McAvey noted that evidence suggests that the current fiscal environment is only going to get tougher.

Legal Issues

Discussion of legal issues related to land assembly and infill development centered around the use of eminent domain. Participants considered its constitutional foundation and its more common application at the local level under state statute. The multiple pressures and complexities of infill development faced by local municipalities in applying takings for redevelopment were a recurring theme. Key points emerging from the discussion are listed below. Their evolution within the conversation follows.

- Eminent domain questions regarding land assembly are not about whether there has been a taking; rather, they are about the appropriateness and legitimacy of the public purpose the taking serves.
- Debate about eminent domain and property rights creates opportunity for new coalitions.
- Battles over the use of eminent domain are fought out as much in the court of public opinion as in courts of law.
- Federal court rulings on eminent domain do not represent the judiciary reality at the state level.

The attitude in state courts is shifting from extreme deference to legislative decisions to one of close scrutiny. Courts are concerned with the substantive definition of public use and how broadly it should be applied. Second, they are concerned with the integrity of the governmental decision-making process.

- High-publicity challenges to takings for redevelopment are having a chilling effect on redevelopment initiatives.
- Having a clear definition of abandoned and blighted property is helpful for the exercise of eminent domain under state statute.
- Reliance on blight designation for exercise of eminent domain limits its intended use.
- Underutilization is not blight. Blight is not nuisance.
- Redevelopment authorities have a history of unconstrained authority which has been abused. Redevelopment laws are in need of reform.
- Use of government power to assemble and develop infill land creates value. Who deserves the premium?
- A lack of transparency in the government taking process invites challenges. It is a barrier to infill development.
- Quantitative information on the purposes and benefits of land assembly will help local government officials make the case to courts and the public.
- Eminent domain for economic development and transfer plays out differently in older suburbs than in core cities.
- Fiscally stressed cities may exercise eminent domain improperly to raise tax revenues.
- A lack of transparency, sophistication, and thoughtfulness in application of eminent domain invites challenge.

John Echeverria, director of the Environmental Policy Project at Georgetown University Law Center in Washington, D.C., led the discussion on legal issues. He noted that legal issues related to land assembly are extremely complex, and that the list of legal barriers to infill development is long. For the purposes of the forum, he focused on the constitutional takings (clause), and the parameters it sets for land assembly and redevelopment using eminent domain. As is well known, the Fifth Amendment of the U.S. Constitution protects citizens against the taking of property without just compen-

sation, even for legitimate public purposes. Echeverria suggested that the takings and eminent domain discussion in relation to land assembly is different from the well-known debate on just compensation. “The question is not whether or not there has been a taking—there’s clearly been a taking—the question is whether or not it is for a public purpose, and whether it can go forward.”

Echeverria observed that this debate draws unlikely parties to the same side of the table—namely, homebuilding associations and environmental organizations such as the NRDC. Both constituencies see advantages to the government’s use of authority for land assembly. He noted that past opposition to governmental authority related to land regulation by some homebuilders and developers has proven disadvantageous for infill development, and he advocated a more expansive view.

Echeverria presented two leading United States Supreme Court cases that are the basis for federal law on takings.

In *Berman v. Parker*, a 1954 case centered around a takings in southwest Washington, D.C., the Court unanimously ruled against a plaintiff who argued that his department store was unconstitutionally taken as part of an urban redevelopment project. Despite the fact that the individual establishment was still thriving, the government’s right to raze and redevelop the entire area in which the store was located, and which was considered a “slum,” was held up. The plaintiff’s second argument, that the taking was not for a legitimate public purpose because the cleared area would be handed over for private development, was also rejected. In sum, this case demonstrated an extraordinary level of deference by the Court to the other branches of government regarding the use of eminent domain.

In *Hawaiian Housing Authority v. Mitkiff*, a 1984 case in which the state housing authority was challenged on the taking of land controlled by a small handful of tribal owners for redistribution to a larger number of new owners, the Court unanimously ruled in favor of the state. The plaintiff argument that the state was not even a passing owner of the properties as in *Berman v. Parker*, but was using its powers to directly transfer property from owner A to owner B, was unanimously rejected, as was the claim that state legislatures did not deserve the same deference as the U.S. Congress.

While these two cases still define federal rulings on takings, Echeverria noted that “it would be completely misleading to read these decisions and conclude that is the state of law in America.” He referred to several state cases that demonstrate the wide range of interpretations of the constitutional takings clause.

During the 1980s, in what is known as the Poletown Case, the Michigan Supreme Court upheld the taking by the city of Detroit of a large parcel of land for a General Motors factory as part of the city’s effort to keep business and manufacturing in the city. The court, however, applied very different standards in making its ruling, stating that in circumstances where a taking involved the transfer of property from owner A to owner B, a heightened level of scrutiny applied. Given the pressing economic circumstances in Detroit, the taking under question survived review.

In November 2003, in the case of *County of Wayne v. Hancock*, the Michigan Supreme Court granted review of a case in which the taking of land by the county for land assembly for an industrial park near an airport is challenged. The taking was upheld by the lower Michigan Court of Appeals based on Poletown, but the Michigan Supreme Court has asked parties to brief the question of whether Poletown should be overturned, suggesting that the court may believe that the high standards set in Michigan for eminent domain may be too weak, and that only truly exceptional circumstances may warrant that taking of land for transfer from party A to party B.

In the 2002 case of *Southwest Illinois Development Authority v. National City Environmental*, the Illinois Supreme Court reversed its initial ruling for the Authority, and upon reexamination ruled that the eminent domain taking of a site adjacent to a racetrack by the Authority for the purpose of developing additional parking by the owner of the track, was not a legitimate use of government powers. The court’s ruling suggests a new, more narrow reading of the *Berman v. Parker* federal ruling, and growing scrutiny of actions by redevelopment authorities acting as, in effect, agents for hire for private developers. The Southwest Illinois Development Authority charged a fee of 6 to 10 percent of the land value for execution of condemnation on properties.

In sum, while *Berman v. Parker* and the Mitkiff cases remain federal precedents on takings, state courts are putting limits on the circumstances under which taking powers—especially for transfer of property from one private owner to another—can be exercised. They also are putting into play more stringent standards for takings established under state laws and state legislative processes.

Echeverria suggested that two key issues emerge from this history of rulings on eminent domain. One is the definition of public use. Courts are increasingly weary of the notion that if projects bring jobs to a community and generate tax revenue, that they can be deemed to be for a public purpose. Review of the Illinois case shows that the developer had a number of options for solving its parking dilemma—among them, purchase of the adjoining land or construction of a multistoried facility.

Second, notes Echeverria, “There is judicial concern about the integrity of the governmental decision-making process.” Are governments making public decisions? Are elected officials and appointed representatives going through public government processes? Or are developers invoking government power to achieve private purposes?

Echeverria suggested that the current state of the law related to takings represents pendulum swings in judiciary attitude toward government power starting with early rulings in the 20th century. These rulings were eventually perceived as too stringent and limiting in their review of government activities, leading to the New Deal, a time when government agencies exerted great power. “After the 1930s and 1940s and 1950s, the courts really backed off. They said that legislative policy judgments are for the legislatures to make, and we will review them and challenge them only if they’re completely irrational and arbitrary.” *Berman v. Parker* represents the application of that judicial posture. At the time, courts were impressed by the fact that these takings were compensated at fair market value, and applied enormously deferential standards to compensated takings. Recent rulings, however, suggest a counterreaction. Many people, noted Echeverria, are beginning to feel that the courts have backed off too far, and greater scrutiny of governmental action is in order. This is playing out in recent state court rulings on the takings clause and the public use clause.

The movement toward greater scrutiny of public takings is also evidenced by the campaign of an independent organization, the Institute for Justice. Echeverria pointed to the organization's filing of high-profile amicus briefs and court challenges to public takings around the country. The Institute for Justice is making headway not only in the legal courts, but also in the court of public opinion, with dramatic stories on television programs such as *60 Minutes*. He observed that the ten steps for effective infill development presented by Mallach—namely, the recommendation to expedite eminent domain proceedings—are moving against a strong tide in the opposite direction.

Panelists followed Echeverria's presentation with a discussion of eminent domain powers in various contexts, and of the barriers that a movement to limit use of eminent domain—even in legitimate circumstances—present to effective land assembly. Engle first queried whether a meaningful comprehensive plan, with an upfront public planning process, would be a sufficient basis to uphold eminent domain. Echeverria suggested that it would depend on the circumstances and the court. "But certainly the fact that before the developer appeared on the scene there was a thoughtful process that identified a publicly desired use for a parcel of property, would be very helpful." He observed that "developers are very creative, useful movers and shakers in our society, and a lot of communities rely on developers to come to them with good ideas. It raises a sort of dilemma." Further, he suggested, "It's not so important which came first, the public or the developer, but what should be most important is the integrity of the process that leads to the final conclusion that there should be redevelopment, and in particular that you should go forward in an area. But all this is very much up in the air."

Schilling noted that he was aware of pending legislation in three or four states that sought to limit eminent domain powers as a result of the cases being made by the Institute for Justice. He and panelist Donald Carter, president of Urban Design Associates in Pittsburgh, Pennsylvania, noted the chilling effect that the threat of litigation was having on redevelopment authorities. Worthy projects, Carter noted, which were justified under the rules of the court, and which dealt constructively with the problems of blighted neighborhoods, were being taken off the table.

Several panelists suggested that a clear definition of blighted and abandoned property would be helpful in justifying takings by municipalities to legislatures and the courts. Noreen Beatley, state and local policy adviser for the Enterprise Foundation in Washington, D.C., sparked a discussion on the legitimate uses of blight designations for takings when she cited a case in Austin in which the city inappropriately attempted to exercise eminent domain on an older neighborhood in order to make land available to a developer for retail. "It was a misstep by the city because who they brought in to determine whether it was a blighted area or not had no real knowledge of the area."

Echeverria distinguished eminent domain powers from definitions of blight based on constitutional law, noting that the use of eminent domain was constitutionally permitted for a wide range of public purposes, from highway construction, to schools, to, most notably, the extension of gas lines by private utility companies. All of these applications were deemed appropriate for furthering of the public good. "If one were going to defend the power of eminent domain," he argued, "one would have to do it in terms of the enormous public benefits to be gained from assembling of property." He did note that a number of state statutes that authorize the use of eminent domain do so with a focus on blight, necessitating that municipalities make a finding of blight before proceeding. McAvey said, "65 million additional people or so will be in the country within 20 years. Where are they going to go? Some 80 percent of them will go to metropolitan areas; they are not going to be in the rural areas of Montana. So our cities—speaking broadly and not just the city limits, but our metropolitan areas—will be challenged. Then you look at our first- and second-ring suburbs that are really starting to face these issues. This is a huge issue when we talk about land assembly for infill. Because it isn't just vacant and abandoned land and blight. That's why I think that John presented the case very well. The constitution has not addressed this issue and said about blight, but certainly the states are." Panelists argued that, constitutional laws aside, the practical exercise of eminent domain is played out within the realm of local regulations and state statutes. Mallach noted that for municipalities dealing with land assembly, the blight issue was central.

Mallach, Beatley, and others highlighted issues that arise when redevelopment agencies have unrestrained authority. Mallach drew from his own experience as director of housing and development for the city of Trenton, New Jersey, during which tenure he employed the power of eminent domain effectively to serve public purposes. Yet even while working in that capacity, he said, “I felt that it gave me and the mayor and the governing board far too much unbridled authority.” Under then-existing New Jersey law, there were virtually no restraints on the designation or use of blight for eminent domain. Once the municipality had taken the property under a redevelopment statute, “it was able to sell it to anyone it wanted to, for any price it wanted to, without the benefit of a competitive process.” Mallach also observed that many redevelopment authorities have grown arrogant, inviting challenges such as those from the Institute for Justice. He recommended that the structure of redevelopment laws in many states be targeted as an area for reform.

Carter and several other panelists again referred to the recent New Jersey statute, noting that the definition of blight it presented, and the tools it made available for applying eminent domain for infill development, especially for the creation of mixed-income and affordable housing, was potentially a very helpful and a powerful tool.

Kelly suggested that further distinctions in the definition of vacant and abandoned land were needed to deal effectively with assembly issues. He observed that in many cities, the definition of blight “is so stretched as to encompass any properties that are not netting as much property tax as the city would like.” He suggested that a distinction needs to be made between underutilization and blight. Second, he recommended that a distinction between blight and nuisance needs to be made. While nuisance, like blight, could affect surrounding property values, nuisance properties threaten the health and well-being of a community—for example, as fire hazards or centers for illegal activity. He noted that the city of Baltimore applies the definition of nuisance to serve building violation notices under the city’s building code, and to initiate receivership sales such as he described. This avoids issues of a taking altogether.

Several panelists asked for a clarification of the Lakewood case, which was featured on *60 Minutes* as well as in *Realtor Magazine*. Schilling summarized that the city of Lakewood attempted to use its authority to take land in a neighborhood built during the 1930s and 1940s for redevelopment into a high-end, mixed-use residential project. While the existing properties were not high end, they were fairly well maintained and by no means in a state of blight. The city, however, saw an opportunity to significantly increase tax revenues through the project. The mayor’s response on *60 Minutes* and in other public forums did not make a good case for the city’s actions. Robert Puentes, senior research manager at the Brookings Institution in Washington, D.C., observed that the situation Lakewood found itself in probably well represents the situation of many older suburbs. “Whatever political missteps they made in Lakewood, the reality is that they really needed to bolster their tax revenue.” He argued that the issues related to land assembly play out very differently in older suburbs than in inner cities or the open suburbs of the West. Such bad press, he noted, kills the initiative for innovative programs in these municipalities and is very discouraging.

Echeverria sounded a note of optimism by reminding panelists that the issue of land assembly and infill development has created broad-based coalitions. From the legal perspective, he noted, the takings issue for land assembly is relatively easy compared with other regulatory takings issues that abound. “It’s more a matter of organizing the information and groups involved.” Engle recommended that, given the unprecedented coalitions of builders, developers, environmentalists, and smart growth advocates working on this, and the many challenges facing local governments attempting to use eminent domain for infill development, it would be timely to issue a background paper or an analysis outlining the public purpose and benefits of land assembly. “Good quantitative information,” he noted, “could be used by various local government authorities to make their case to the public and to the courts.”

Schilling and Echeverria put forth the notion that eminent domain is used to address many complex situations, and these need to be considered. In the Illinois racetrack case, for example, Schilling suggested that eminent domain was used to move holdouts. “Holdouts can jeopardize land assembly and development plans in several ways, from passively holding out by being unavailable, to extorting exces-

sive amounts of money.” Participation of a major player in the market suddenly changes the value of that land and its potential costs to buyers. Echeverria suggested that the topic of the premium created by land assembly would be a good one to pursue in ongoing forum discussion. When government power is used for land assembly, he queried, who deserves the premium? Potential beneficiaries include the developer, the neighbors, and the holdouts.

Echeverria and Mallach argued for greater transparency and thoughtfulness in the way that governmental processes employ eminent domain. This would make it much easier to defend. Mallach agreed with Puentes that innovative redevelopment was much needed in older cities and suburbs such as Lakewood, but he said that the Lakewood case “highlights the need for a transparency in the process and issues involved. Local officials need to be sophisticated enough and thoughtful enough, have a transparent enough process, and to have done their homework enough to effectively sell their plans to their constituencies.”

Echeverria suggested that notice is yet another topic for reform and forum discussion. All too commonly, statutes under which local governments and redevelopment authorities can initiate an eminent domain process without giving individual notice to affected landowners are neither politically justifiable nor legitimate, he argued.

Kelly sounded a note of caution for redevelopment in older suburbs and the use of eminent domain. With the growing national deficit and an affordable housing crisis looming in many cities, he observed, immigrants to the United States increasingly are ending up in the older suburbs, where housing is still relatively affordable. “Will cities like Lakewood and other suburban governments make these areas easy targets for redevelopment and taking, as they did in black and ethnic neighborhoods in past decades?” He raised concern about the ability of government decision-makers to resist the temptation to acquire land by wiping out such older neighborhoods simply because it is easy to do so.

Gray responded that in Philadelphia, the city was alleviating those pressures through a gentrification management approach and stabilization projects that provide basic systems repairs, fixed roofs, and other improvements, making it possible to retain a mix of incomes in

neighborhoods. Several panelists, however, noted that although this program had great merit, many smaller suburbs do not have the planning departments and the organizational infrastructure to manage them. Beatley observed that in dynamic market cities such as Washington, D.C., rising property taxes were also pushing people out of neighborhoods.

Helen Brown, director of the Civic Center Barrio Housing Corporation in Santa Ana, California, shared the story of the complex turns that use of eminent domain can take in a city. Her organization, Civic Center Barrio Housing, was founded in response to the wholesale use of eminent domain by Orange County during the 1970s, which wiped out an entire Hispanic neighborhood. Cheap, overly dense housing was constructed in its place. In 1995, the organization was approached by the county to redevelop the area, with a \$2.5 million county grant to buy up vacant units and renovate them. Her organization is in a position to use eminent domain to take out the blighted buildings in the neighborhood and create a better environment, but is faced with calls against government interference by a vocal minority of residents. They are seeking advice and assistance.

Financing

Financing discussion focused on the financial systems that need to be in place for successful land assembly and infill development to occur, and barriers in the system. Participants considered various approaches to land banking and explored innovative financing tools that are emerging in response to decreased public funding. Key points emerging from the discussion are listed below. Their evolution within the conversation follows.

- Financing exists along a continuum. Products and risk are positioned along the continuum in relation to the development process and conditions. This continuum is not well mapped or understood.
- Financing issues related to land assembly and infill development are generally more stable than legislative and legal issues.
- Cities and organizations are reinventing the wheel. Many are unaware of financing products that may help them actualize a project.

- A lack of designated federal funding for the land identification and assembly process is a barrier.
- Community Development Block Grants are not being used for their original purpose of land assembly and redevelopment. Rustbelt cities are an exception.
- Land banking requires patient money. Where is it?
- Intermediary organizations, whether corporate, non-profit, or philanthropic, can play a powerful role in the financing of land banking.
- State housing finance agency funds have been shown to be effective as sources of capital and leverage money for land assembly.
- Brownfield funding offers a model for funding of land assembly and infill development.
- California cities use tax increment monies to assemble land.
- A handful of pioneering private land investment package products are emerging.
- A lack of knowledge on the part of city and suburban governments about land assets and their value is a barrier. Land information systems and databases are a vital component of successful infill development.
- Funding of predevelopment design and zoning activities is key to success.
- Nonmainstream lenders are a crucial link to financing for nonprofit developers of underused urban land.
- Highest and best use of land from a financial/economic point of view may not be the highest and best use for the community.
- Patient money has a 20- to 30-year time horizon.
- Bottom-up pooling of land is an innovative approach to land banking. Local and state governments can incentivize its use.
- Australia has effective financing and regulatory tools for land assembly and infill development. Proactive planning is a key to success.
- Proactive planning is key to successful land banking.

- Can corporations be incentivized to invest in and hold land in exchange for tax credits?
- Desperate cities “give away the shop” through subsidies and tax incentives to developers.
- Most innovative city-based community development funds and funding tools for land assembly and infill development are built on public/private partnerships.

Linda G. Davenport, deputy director of the Community Development Financial Institutions Fund (DFI) in Washington, D.C., introduced the topic of financing for land assembly and infill development, drawing on her 20 years of experience in various sectors of the finance industry including Fannie Mae’s American Communities Fund. She suggested that financing is a more stable component of the infill development process, although certainly challenges exist. She framed financing within the multi-staged process of development, noting that for any redevelopment to occur, financing must be available for the phase and type of redevelopment that is being planned. “You can look at financing as a continuum. You need certain kinds of it at certain places. Whether it’s totally market rate or some combination of market and government, it’s still dependent on knowing that there’s somebody next in the food chain who will take you out.”

The success or failure of a project, she noted, often depends on factors outside financing. These factors also can determine whether, in the end, financing is viable. “Financing is a conversation that can be held when a whole range of issues, many of which you talked about his morning, have been resolved.” Among these issues are clear title, resolution of environmental conditions, and adequate market comparables and market feasibility.

Financing also exists along a continuum of risk, and lenders’ comfort zones vis-à-vis to risk are dependent on which phase of the development process they fund, and which market they serve. Market-rate projects, such as those developed by Konnor’s company, rely on fairly conventional sources of financing in addition to equity, and the project will not proceed unless a mainstream financing partner is in place. These mainstream sources of capital rely on predictability and standard practices to maintain profitability. Projects such as those developed by Gray’s and Brown’s nonprofit organizations must tap into nonmainstream sources, which have a different view

of risk and are ready to offer specialized products. With development projects that seek to redevelop vacant and abandoned land, that is, non-income-producing properties, “where there is a very tenuous connection between the current state of the property and its projected use,” securing of mainstream financing is most challenging. Public incentive programs tend not to be convincing to mainstream lenders.

Davenport suggested that a model that captures the context and market conditions of various infill projects and relates them to the continuum of financing would be very helpful. She has observed in her travels to cities around the country that there is a wide disparity of knowledge among cities and states about financing sources. To address this problem, she recommended the creation of a clearinghouse of information enabling cities and other players to more effectively bring project funding to their communities.

Davenport then asked panelists to identify finance obstacles they have observed and that need to be addressed, as well as creative approaches that have been tried.

Panelists explored the issue of financing for land assembly. Beatley noted the lack of funding for the process of identifying and assembling land. Davenport concurred that this is difficult to fund because there is no demonstrable short-term profit. Schilling noted that the city of Minneapolis and the University of Minnesota addressed this problem by teaming up to create a land-tracking database, tapping into U.S. Department of Commerce funds through a technology opportunity grant. That program, however, has been defunded. Davenport offered to inquire whether her organization’s CDFI technical assistance grants could be used to create this kind of infrastructure.

Engle noted that federal CDBG funds were originally created to fund urban renewal and land assembly, but that few mayors are using them now for that purpose. Kromer has been doing research on the use of CDBG funds by municipalities, and he noted that older Rustbelt cities are spending as much as a third to a half of their block grants on land assembly, acquisition, demolition, environmental remediation, and similar activities. In comparison, Sunbelt cities are spending about 0.5 percent. With the current lack of dedicated federal funding for land assembly, he suggested, this disparity was understandable. Davenport suggested that land banking may in

fact be most productive in Sunbelt cities, where opportunity still exists for acquisition of land in unique and strategic locations.

Kromer also suggested that an appropriate use of CDBG funding by municipal governments would be for gap financing, guaranteeing the gap that mainstream lenders are unwilling to fill because of lack of comparables in transitional areas.

Engle urged that urban developers and urban community advocates be more sophisticated about financing of projects. He suggested that they take advantage of the tax system in a creative way, such as the very successful low-income tax credit program that funds affordable housing, rather than looking for federal appropriations. “Maybe we should be thinking about getting corporate money into holding land for an extended period of time, with some sort of tax credit, with some parameters, for example, for where the land has to be, for certain smart growth redevelopment needs.” He suggested that this is the type of incentive program that both homebuilders and environmentalists could get behind.

David Feehan, president of the International Downtown Association in Washington, D.C., introduced the potentially constructive role of private intermediary organizations such as Detroit Renaissance and the Allegheny Conference in Pittsburgh. “These are CEO-level organizations that can readily and speedily invest money when there is an opportunity,” he noted. In Detroit, Feehan was able to secure \$2 million upfront for land assembly from Detroit Renaissance. This type of intermediary money is not philanthropic money, he pointed out. Rather, it is patient money that can wait for a 20- to 30-year return. While noting that the focus of these CEO organizations has been shifting, and they have shown some reluctance to invest significant amounts of money in one project, Feehan nevertheless argued that this type of intermediary organization, whether it is private or otherwise, can play a very constructive role.

Carter followed up on this point and described how the Allegheny Conference in Pittsburgh worked, and the increasing participation of corporate and family foundations in land assembly. A consortium of four foundations in Pittsburgh purchased a former industrial site next to the Monongahela River for a mixed-use development.

“They are looking at this as a responsible way to use their endowments,” he observed, noting that they are able to work with a 20-year return. Similarly, organizations like Funders for Smart Growth and the Macun Foundation are funding urban development projects in other cities.

Beatley drew from a lesson learned by the Enterprise Foundation to highlight the necessity for patient money. The Enterprise Foundation was a founder of the Smart Growth Fund in Portland, Oregon, which included the participation of the city of Portland and a handful of surrounding municipalities. The purpose of the fund was to finance land assembly with a return of five to seven years. The participatory decision-making process proved strong, she noted, but the investment period proved too short to be effective.

Patient money for land assembly is hard to come by. Davenport confirmed that even Fannie Mae funds such as the American Communities Fund, while supporting redevelopment activities, were not in a position to provide such patient money. Being a patient long-term investor was not Fannie Mae’s purpose. Konnor confirmed that similar dynamics played out in the private housing industry. While land banking could prove valuable in the long term, large public homebuilders are reluctant to hold land for more than a year because of pressures to avoid nonproductive assets that cannot be immediately converted to cash flow. Private homebuilders such as Konnor’s current company also are reluctant to invest in land banking because “the challenge is that our core business is not land speculation. Our core business is building the housing itself. Some sort of partnership is needed.”

While supportive of the intermediary concept, Mallach cautioned that most small cities do not have the kind of intermediary structure that was described. He is participating in the creation of a capital fund for CDCs in smaller cities for the acquisition of land. The fund will serve essentially as a line of credit for CDCs with a good track record. In New Jersey, the fund will be capitalized to \$10 million. The state housing agency has agreed to provide a guarantee of \$5 million for the back half of each loan. State housing agencies, Mallach noted, tend to have substantial reserves and flexible administrative funds. He added that in addition to acquisition costs, transaction costs associated with the land assembly can be quite high.

Carter characterized these types of intermediary entities and mechanisms as community development funds, which in Cleveland and Pittsburgh function as matching funds to public money. The corporate community in Pittsburgh has created a \$50 million pool with a matching public side. “They decide together what they are going to do with the money,” which may include land acquisition, design, or gap financing. Carter reinforced the need for these types of funds to be managed by real estate professionals with a high level of responsibility. Proactive planning, he added, must be part of the process.

Gray described a program, completed on a pilot basis in Philadelphia and subsequently adopted by the Pennsylvania Housing Finance Agency (PHFA), which funds acquisition, construction, and activities related to homeownership in distressed areas. The initial pilot program involved creation of a \$5 million reserve using PHFA funds. Based on its success, the governor committed a total of \$15 million to the reserve. The state funds are repaid by investing a small portion of the money in a 30-year zero-coupon bond.

Gray expressed a concern that “cities that are desperate give too many incentives.” Developers receive so many subsidies and tax breaks, she noted, that “by the time we get done rebuilding Philadelphia, we will not have a tax base.”

Young Hughley, president and CEO of the Reynoldstown Revitalization Corporation in Atlanta, Georgia, highlighted the need for more effective partnerships between nonprofit and for-profit entities for infill development in underutilized areas. “It is often very difficult to persuade a for-profit developer to see the potential,” and, he noted, it is a real challenge to persuade for-profit developers and other intermediaries to invest in land banking in a timely manner. As director of a community-based organization, Hughley is in a position to see community trends early and to act on them. He asked how to give them the vision that a community-based organization has.

Schilling suggested that the model of brownfield redevelopment financing was a good one for land assembly and infill development. Funding for redevelopment of brownfields has expanded to include EPA pilot grants for assessment, revolving loan funds for cleanup, and even industrial redevelopment bonds.

Charles Kendrick, managing director of Clarion Ventures, LLC, in Boston and ULI trustee, categorized the existing sources of money for land banking as follows:

- very limited federal programs;
- state funding and mechanisms; and
- foundations and intermediaries willing to make long-term investments.

He also suggested that a modeling of the development financial structure that shows how various players are using sources of money for long-term land banking would be helpful. He reiterated the need for municipalities to take responsibility for tracking what land they own through tax collection, noting that St. Louis, which owns half of the city land for tax collections, does not have an actual record of what it owns, what these properties are worth, or how to deal with them.

Kendrick recommended that for effective infill development to occur, predevelopment soft financing would also have to be looked at. These soft costs “are a small percentage of what it costs to ultimately develop, but it becomes one of the absolute stumbling blocks.” Perception of risk about properties targeted for infill development makes that soft financing for design, zoning, and other related work hard to secure. The source for this money, he suggested, will likely be private, either for-profit or nonprofit. He is working with others in Boston to create financing of this type. Beatley noted in her discussion of the Smart Growth Fund in Portland, Oregon, that a lack of provisions for soft costs was one of the shortcomings of the original fund structure. The Enterprise Foundation has now built that into the fund.

Ornamenta Newsome, director of the Washington, D.C., office of LISC, confirmed that LISC provides the riskier soft money loans that mainstream lenders are reluctant to make. Without LISC’s participation in financing of nonprofit development projects in hot market cities such as Washington, D.C., affordable housing developers would have little chance to compete. She highlighted the issues faced in Washington D.C., a compact city where a recent real estate boom has made almost every property desirable. There is no lack of investor interest. Nonprofit developers, however, do not have ready access to information about which products can fill their needs through the stages of development. The financiers who serve these

organizations are similarly disconnected when it comes to knowledge about complementary products. “The problem is we’re not connecting the dots.” If the various players in the process sat down and talked to each other, she suggested, “we’d find that we have those dollars along the continuum.”

Newsome also noted that in cities experiencing great market pressures, the key question related to land banking may be what is done with the land once it is secured. “The highest and best use from the standpoint of quality of life in the community may not be the highest and best use in terms of cash flow or other economic reasons.”

In response to Davenport’s query about creative land banking by younger cities for future development, Brown called attention to the creative use of tax increment funds in Santa Ana, California. Under the imminent loss of tax increment monies, cities have decided to invest in a land bank tracking database, and in properties. A \$1 million investment by the city of Santa Ana secured an acre of land for development of eight houses by Brown’s organization, Civic Center Barrio Housing. The city of Fullerton has acquired a former manufacturing site and created a plan for a redevelopment area providing 4,000 housing units plus retail and commercial uses.

Highlighting yet another innovative approach to financing infill development, McAvey brought to the panel’s attention a new land investment package being developed by Chris Leinberger, an active ULI member and a member of the Congress for New Urbanism, in cooperation with several foundations. The concept for this package involves three layers of investment, taking the approach to land as a nondepreciable asset. Patient investors hold the land for a bond-type return. The building project is then funded through a classic debt and equity structure. This approach is modeled after Battery Park City Authority’s model of private land development on public leased land. Several case studies on projects developed via this approach would be instructive, McAvey suggested.

An unorthodox suggestion by Echeverria took the discussion in another direction, leading to an exchange of ideas about bottom-up land banking. In this model, individual property owners get together to package their properties for market advantage. This is done informally already, he noted, but is there a way to institutionalize it and create a legal framework? Could community groups of five to 20 households enter into a formal agreement to market their properties? Panelists responded positively to this idea, and Davenport noted that it is already being done in other countries.

Peter Waterman, a professor at Griffith University in Brisbane, Australia, described how this approach was used in Australia with the support of local and state government. In the town of Perth in the state of Western Australia, local government facilitated the consolidation of four properties by landowners for the development of higher-density infill housing, at a healthy profit to the original owners. Residents who wanted to stay had the option to receive a unit. In the state of Victoria, public officials grew concerned with low-standard, nonconforming subdivisions. In response, they created a state-level land purchasing entity, or land trading corporation, which bought up land and resold it for appropriate development. The state of South Australia initiated land banking as part of a land swap process. Developers who were undertaking projects in inappropriate locations or at mismatched densities were permitted to bring them to fruition, but on a different site. Davenport added that another mechanism available in Australia was the power to require landowners for some consolidation projects to contribute their properties to the whole, with the choice to take out their value or retain ownership as a share of future profitability, essentially making them land bank investors.

Several factors make these types of mechanisms possible in Australia, Waterman observed. First, Australia has a strong tradition of proactive planning. State government does not shirk its role. Second, because local governments are very much an arm of the state, states are able to enforce new policies and legislation at the local level. Third, as part of the country's proactive approach, Australian states and territories must undertake a mandatory review process of plans and zoning requirements.

Michael Pawlukiewicz, director for environment and policy education at ULI, brought to the panel's attention the formation of a new for-profit company, Landpool Administrators, LLC, which brings landowners together to share the profits from development, primarily in suburban areas. When land is consolidated for compact development and shared open space under this private arrangement, owners of the original open space share in the profits from the development of the compact area.

Executive Issues and Implementation

Pawlukiewicz led the discussion on executive and implementation issues during a working lunch. From a pool of topics he proposed, participants focused on NIMBYism, growth management, and citizen participation. Key points that emerged from the discussion are listed below. Their evolution within the conversation follows.

- NIMBYism is a major barrier for smart growth and infill development projects.
- Community residents (“NIMBYs”) have legitimate concerns about the environmental impacts and infrastructure burden of development in their neighborhoods.”
- Education and tools for good decision making can turn opponents of a project into proponents.
- Concrete and useful amenities for communities affected by infill development and density can offset impacts and help build support.
- The development community carries a disproportionate burden of the debate over land use and growth management.
- Coalitions of homebuilders, developers, and environmentalists are effective partners for addressing infill development issues.
- Growth management plans and zoning are not reviewed often enough.
- Some smart growth developments are smarter than others.
- Insufficient conservation of land on the outskirts to balance core and inner-ring infill is a barrier to implementation.

- The proper level at which to address sprawl is the state level. State programs must be enforceable to effect change.
- Local governments are not being held accountable for achieving zoning density.
- Urban infill development alone cannot respond to population pressures and meet demand for housing. Suburbs are the new “battleground.”
- Homebuilders are ill prepared for the demands of undertaking infill development. Resistance to change in practice at the executive level is a barrier.
- New suburban-ring development consumes land at a rate three to four times higher than that in older suburbs.
- The general public does not agree with planning and environmentalist conclusions about the benefits of density. Education can help.
- Public education must go hand in hand with legislation and enforcement.
- Pressures at the municipal level to increase tax revenues make it difficult to plan comprehensively and for the long term.
- Denver city planning for the Stapleton Field redevelopment suggests a good process.

The discussion started with NIMBYism, a barrier faced by developers in every part of the country. Discussion of smart growth and infill development can rarely go far without addressing this issue, Pawlukiewicz observed. ULI is in the process of producing a book on this topic. John Kortecamp, executive vice president and CEO of the Home Builders Association of Maryland in Baltimore, provided examples of how NIMBYism plays out in Maryland. “NIMBYs are absolutely everywhere, and they are thwarting some of the best efforts at not only infill and redevelopment, but also some of the best smart growth greenfield developments.” He drew from examples in inner-city Baltimore, where community controversy arose over plans by the city and Johns Hopkins Hospital for an infill biotech park. NIMBYism has slowed down the development of a high-quality residential project that would infill an older suburban neighborhood in Baltimore. And in southern Howard County, a bedroom community between Washington, D.C., and Baltimore, a smart growth project that had the backing of environmental organizations including the national Sierra Club, 1,000 Friends of

Maryland, and the Chesapeake Bay Foundation was almost thwarted by NIMBYism. The developer had to go through 39 public hearings before the project was approved, Kortecamp noted. He observed that the greatest opposition came from a neighbor who was president of the county chapter of the Sierra Club. McAvey pointed out that in her experience as a developer, she has had to go through as many as 75 public hearings for a project. The development community, she observed, carries a great deal of the burden for the public debate on growth management.

When queried about bright spots in relation to NIMBYism, Kortecamp observed that powerful environmental organizations have played important roles in supporting good projects. There is a lot of opportunity for constructive collaboration between homebuilders and environmentalists on smart growth and infill issues, he noted. Environmentalists and homebuilders collaborated, for example, to push Maryland counties to maintain more accurate tracking of economic development and housing development plans. He also suggested that the 20-year priority funding growth areas in Maryland needed to be reexamined and amended to keep pace with growth and demand for housing. In Portland, Oregon, he noted, planners are required to review their inventory, examine their projections, and make adjustments to plans.

Jessica Cogan, deputy director of the Smart Growth Leadership Program at the Smart Growth Leadership Institute in Washington, D.C., and Kaid Benfield, director of the Smart Growth Program for the Natural Resources Defense Council in Washington, D.C., responded from the environmental and regulatory perspective. They agreed that new constructive coalitions have grown out of the smart growth movement and issues related to infill development. These were hard to imagine just ten years ago—and were a cause for optimism, they noted. In Washington, D.C., for example, the Smart Growth Alliance, directed by forum panelist John Bailey, creates opportunities for collaboration between the business and environmental communities, and brings them together to endorse good projects. Benfield noted that he is working with Pawlukiewicz on a collaborative effort with the Congress for New Urbanism and the U.S. Green Building Council that will bring new standards of environmental performance to neighborhood development.

State governments are in a position to be proactive on behalf of good projects, Cogan noted. In Maryland, during her tenure with the smart growth program under Governor Parris Glendening she worked to create a program that evaluated and scored development proposals. “If it scored well, we would go out representing the state, and we would testify in favor of the project.” Commissioners in Montgomery County, she noted, were prepared to support increased densities in populated centers like downtown Bethesda. But there is a barrier to such continued support; they are not seeing the benefits of smart growth land decisions in the form of conserved green space on the outskirts. Similarly, Benfield noted, environmentalists are concerned that even while they are advocating for denser infill development, unchecked sprawl continues on the outskirts. “We need to have more support on the conservation side,” he observed.

Benfield added that “not all infill development is created equal. Some development is smart and respectful of historic resources and community character, has good walkability, and has good transit access. It will be easier to win environmentalists’ support for these projects, including in the land acquisitions stage to the extent that those smart elements are present.”

Cogan proposed the creation of mechanism that could be a direct one-on-one link between infill development and conserved land.

Benfield addressed the issue of shrinking inventory in Maryland’s priority funding areas, noting, “One of the reasons that the inventory is shrinking is because what is being built is not smart or compact.” Cogan concurred that often the first thing that gets negotiated out of infill projects is the density. This leads to communities and counties not being able to achieve the growth within their priority funding areas. A barrier to comprehensive smart growth development in the state of Maryland, she argued, has been that local governments are not holding themselves accountable for achieving their zoning densities.

Benfield addressed the topic of NIMBYism by reminding the group that smart growth and infill development decisions are often a trade-off. Regionally, such projects can bring environmental benefits, but at the local level, they often have substantial impacts on neighboring communities. “We’re asking our constituents who live close to the development to ‘take one’ for the region,” he said. Community concerns, perceived as NIMBYism, need to

be acknowledged as legitimate, he argued. Mallach added that while many planners and environmentalists are pushing the benefits of density, residents of suburban communities simply do not want a denser environment—and the presence of representatives from national environmental organizations at a local public hearing does not make much of a difference.

Panelists discussed the demographic pressures and structural barriers faced by metropolitan regions in outer-ring suburbs. Konnor linked the continued development of sprawl to population pressures and municipal inertia. Cumbersome zoning and entitlement processes limit the amount of infill housing that can be built on infill lots, even while demand grows, he observed. Mallach argued that even if urban infill development becomes much easier and more effective to do, it will accommodate only a small percentage of future population growth. In Chicago, successful urban development and a building boom have accommodated only 11 percent of the region’s population growth. The battleground, he suggested, was not the urban center, but the suburban ring. He cited sobering statistics that in the Northeast, the new suburban ring is being developed at a much lower density than older suburbs were. While suburban development in the 1970s and 1980s consumed about one acre of land per housing unit, that ratio changed to three to five acres of land consumed in the 1990s. And he noted that residents in the newer suburbs, who had the benefit of the newest infrastructure, were the least open to denser infill development.

McAvey reiterated the importance of understanding this set of dynamics in order to address the linked issues of sprawl, infill development, and growth management.

Kendrick argued that the only appropriate level at which to deal with unabated sprawl is at the state level. “Most cities and towns are focused on increasing the value of their properties on the next street. They are not mission-driven.” Given the lack of popular will to take on this issue, the lack of federal programs, and the lack of focus on the part of municipalities, it is up to the state, he argued, to set the broader context and the rules of development. Davenport suggested that while statutory changes may be necessary, education plays an important role. “When you ask people whether they want something new in their backyard, they’re always going to say no, because change is frightening.” She described the shift in attitude that is possible when citizens are given the tools

to evaluate density. New software tools such as the one used by Jim Carr of the Fannie Mae Foundation make it possible to envision the evolution of a one-story strip development into two-, three-, four- and five-story buildings. Citizens realize that density does not have to mean a 25-story building next door, she noted, and it can add value to their community instead of lowering it. “There’s an enormous opportunity for education that we are overlooking,” she said, “and if we continue to react to the NIMBYism and stay in the NIMBYism mode, it’s always going to be negative, and it’s always going to stop political action to move this forward.” Kendrick concurred that public education is critical to the success of statutory change, which must include informed voter participation.

Beatley highlighted planning initiatives in Utah and central Texas that incorporated strong educational and visioning components. Envision Utah was more successful in attracting public participation, but both efforts did a good job of helping citizens understand density and their regional development options over time. Kendrick described a very successful process undertaken by the city of Denver for the redevelopment of Stapleton Field. Municipal officials actively solicited input from all possible constituency groups and facilitated a rigorous two-year debate. After that debate, when all parties had had an opportunity to “fight it out,” he observed, the city closed discussion for Stapleton’s redevelopment, and put it out for competitive bid. “That was courageous local government,” he said. “Into the project’s third year, they are into year eight of the redevelopment plan.”

HUD sponsor and cohost Edwin Stromberg, program manager for the Office of Policy Development and Research at HUD in Washington, D.C., reiterated that from his perspective, the broader discussion of effective growth management was far more productive than a discussion about acquisition of abandoned and distressed land. The problems of Rustbelt cities and infill for distressed cities are very real, he acknowledged, and were being addressed through a number of HUD programs, but in terms of looking for opportunities where development pressures are greatest, the discussion of proactive and creative growth management was most useful. “We were thinking also in terms of where opportunities and demand for development and growth exist, and what are the strategies that the public and private sectors can take to help overcome barriers are.”

Konnor brought attention to a barrier on the private side of the development process. He noted the lack of adaptability among homebuilders, many of whom “still want to continue doing business the way they were doing it 50 years ago,” to new opportunities. The dynamics of “building a condo building in the middle of the city require a completely different set of talents and expertise than building a single tract home in the suburbs—especially when you get into mixed-use elements, which is something that most of them have never had to deal with out in the suburbs.” Some executives in homebuilding divisions of companies, he observed, have a vested interest in resisting change. “But they will be led in that direction over time, because there is that demand and ultimately from the homebuying public.” He noted growing concern for the environment among homebuilders.

Hughley suggested that it is important to embrace the tension these complex dynamics present. “It is important for developers to embrace the tension, because in that, you shape something that is workable for everybody. It’s important that everybody win something in some way.”

Cogan highlighted the effectiveness of compensatory benefits to communities affected by development. In a Maryland Eastern Shore community/project, she observed, “One of the things that helped turn some of the citizens from NIMBYs to YIMBYs was the fact that the developer was willing to put some things on the table.” In her governmental intermediary role, she made it clear to the community that density was not negotiable, although its form and distribution within the project boundaries was. In return for the community’s cooperation, the developer funded the relocation of a historic home for a downtown museum, and the construction of a boardwalk along the town’s waterfront. “When we started talking about some really concrete things, the nature and the tone of that debate changed.” This was not the only component of community cooperation, she cautioned, “but I certainly think that getting the developer to offer up some amenities that are really concrete and useful for the community is key/extremely helpful.”

Planning

The planning discussion centered around appropriate planning tools for land assembly and infill development, the role of public participation in the planning process, and proactive leadership. Participants explored the dilemma of good planning practice and land assembly costs, and the efficacy of regional plans. Key issues that emerged during discussion are listed below. Their evolution in the course of the conversation follows.

- The manner in which planning is carried out can create barriers and lead to NIMBYism. Transparency, inclusiveness, and enfranchising are necessary.
- Proposed changes without the tools to understand them inspire negativity and resistance.
- Planning needs to be done at proper scale.
- Infrastructure planning goes hand in hand with effective comprehensive plans. Growth and development plans without a clear plan for infrastructure generate barriers.
- Comprehensive planning at the community level can be a useful tool for cities as well as communities.
- Without a mechanism for update and review, even good comprehensive plans become barriers to infill development.
- Keeping communities and constituencies engaged in long-term planning processes is a major challenge. New models for long-term processes are needed.
- Good comprehensive planning creates value, thus contributing to land assembly costs. The existence of multiple redevelopment areas can counteract this dynamic.
- Transparent, inclusionary planning can thwart affordable land acquisition. Developers and public agencies counteract this with straw-man purchasing and assembly for major projects.
- Assumptions about future planning needs and housing may be out of step with realities of diverse communities and changing American households.

- A lack of good databases for land and its uses is a barrier to effective planning.
- Land banking by government entities is both an effective tool and a barrier to infill development
- Who benefits from the new value of entitled land? Does it matter?
- Local capacity is a barrier to planning innovation. A lack of resources, access to talent, and education is one factor. A lack of sophistication in small cities and suburbs to deal with planning and infill issues needs to be addressed.
- Communities and cities fail to plan for success. This contributes to undesired consequences such as a lack of affordable housing.
- Some cities are faced with allocating loss effectively. How to allocate loss?
- Abdication of top-down planning in balance with bottom-up participation is a barrier to success. Government must be at the table.
- Up-to-date databases are a core planning instrument. Creative and innovative financing sources may need to be tapped to make them a reality.

Elizabeth Humphrey, executive director of the Growth Management Leadership Alliance in Washington, D.C., introduced the issue of planning for land assembly and infill development by highlighting a number of key themes emerging from the discussion as well as her own experience with the planning process. “The way we do planning,” she said, “and the way we involve the community can create huge barriers.” The first theme of her presentation focused on sensitivity to constituencies in the planning process. Long-term plans may call for changes in neighborhood uses and infrastructure, such as new transportation hubs and increased density. When residents hear only about what is going to change and are given neither the tools to understand the process nor the opportunity to participate, they will react negatively. Change will be associated with loss. Humphrey drew on her experience in the Portland, Oregon, area to illustrate how this played out in the planning process for a 2040 regional center in an inner suburb. She noted the success of an alternative process, that used by Envision Utah, that engaged the public successfully in long-term planning for a region.

Second, Humphrey highlighted the importance of sufficient scale for planning. Cities like Pittsburgh, she noted, have multiple jurisdictions and districts. To plan within the confines of those boundaries is not effective. Neither is the requirement in some states that every municipality plan for and accommodate all uses. She suggested that for planning to be effective, communities need to take an expanded view that takes regional economies and metropolitan land markets into account. “When you pull it open to the metropolitan level, you get a much better understanding of what uses need to be where, and you also begin to understand why you need to assemble land.”

The third theme introduced by Humphrey was infrastructure. Plans for land assembly and development must be drawn up concurrently with plans for infrastructure, she noted. When this does not happen, which is too often the case, NIMBYism is an understandable reaction. Residents resist projects that do not integrate plans for amenities and supporting infrastructure. Comprehensive land use transportation plans build confidence in government capabilities to handle change.

At the opposite end of the planning scale, Humphrey introduced a fourth emerging theme—community-based implementation plans. Communities can be proactive players in planning their future, rather than waiting for a developer to come along and initiate change, she noted. She emphasized the necessity for updating such plans every seven to ten years to keep them viable—admittedly a challenge with limited local access to resources.

A fifth theme related to effective planning proposed for discussion was timing and sustained engagement. Proactive long-range planning is necessary for managing growth, she noted. “We’re talking to people and creating expectations for things that may not happen for ten or 20 years. How do you keep people focused?” She suggested that the existence of viable civic institutions such as the Growth Management Leadership Alliance was helpful in keeping people connected to the challenges they will face.

Finally, with introduction of her sixth theme, Humphrey “threw a wrench in the works” for comprehensive planning. She asked whether really good plans raise the costs of acquisition and make land assembly more difficult. Comprehensive plans create value, and with knowledge of future designation before hand, landowners see new markets and are likely to raise land prices. With all of the

benefits of comprehensive planning, can it be argued that such plans are bad for land banking and land acquisition? Early land banking by local government could be one response. With that salvo, she threw the issues open for discussion.

Panelists first responded to the issue of sensitivity to constituencies in planning. Brown brought attention to the growing number of immigrants, including Hmong, Vietnamese, African, and Hispanic people, who live in cities and suburbs and who may prefer different settlement and family living patterns/lifestyles than more familiar mainstream models. Carter drew from his experience of working with Hmong and African American residents in a Minneapolis neighborhood to describe an inclusive planning process that accommodated cultural differences. “The idea of a planning process, and of involving the public at every stage, is to find what is that context, what is authentic in that neighborhood.” In east Baltimore, an inclusive planning process was developed after years of rancor between Hispanic neighborhood residents and Johns Hopkins Hospital. Allowing controversy into the process, he noted, was fine. “If you have a planning process that allows people to step up to the plate in a nonconfrontational way to say this is how they see things, it becomes a kind of United Nations place for things to happen.”

Carter argued that planning that does not incorporate democratic process and enfranchisement is an obstacle. Memories of urban renewal projects and a history of programs that harmed rather than helped poor urban neighborhoods have made residents cynical and suspicious of any planning initiative. It takes a long time, he noted, to establish credibility. That credibility is based on inclusiveness and enfranchisement of all involved. Waterman reiterated the need for ongoing dialogue and understanding of cultural sensitivities in planning. He described a planning process in the Netherlands following World War II that proved very effective. It was built on an understanding of cultural and social patterns of Netherlands’s native population as well as new immigrants from the Dutch colonies. Today, the very small country accommodates a population of 20 million in a very integrated physical environment and has a dynamic economy.

Echeverria addressed the issue of land assembly costs related to planning. Indeed, he noted, detailed and prescriptive plans tend to raise land costs, making economically viable development more difficult, possibly necessitating eminent domain or other mechanisms to induce landowners to sell at a reasonable cost. He asked whether planning is a bad thing if one wants to assemble properties for effective development. Humphrey concurred that this was the implication. Echeverria then went on to outline a potential scenario under which government officials initiated an inclusive planning process for redevelopment. Aware of the potential cost implications to newly designated parcels, they land banked them through straw men until the planning process was complete. Was this a legitimate extension of the planning process?

Real life offered another example of municipalities grappling with this dilemma. Cogan referred to the case of Huntersville, a small community outside of Charlotte, North Carolina. Prior to undertaking a detailed master plan for the town's main street corridor, the mayor put an option on all the underused and vacant properties potentially involved. Following successful completion of the planning process, the town flipped the property to the private sector for development at a decent value. Had the town not done this, Cogan observed that, for example, developers who wanted to build townhomes on a lot may have been priced out by speculative landowners who wanted to sell it to the apartment market.

Panelists offered a range of examples in which municipalities or private developers used a clandestine approach for land assembly to preempt rising values. Disney Corporation successfully assembled an enormous tract of property in northern Florida for the development of Disney World in secret. James Rouse used similar methods. Mallach observed that sophisticated developers operating through straw men could accomplish a lot in the area of land assembly.

Konnor put the dilemma in simple terms: "Land is going to gain more value as it becomes entitled. The real question becomes, who captures that value?" He noted that in areas where developers initiate reuse and go through a lengthy rezoning process, they will capture value. He also observed that few developers are willing to undergo such a process with its associated risk and capital investment.

To prevent a speculative rush on designated areas publicly planned for redevelopment, he suggested that cities plan for designation of many such opportunity areas. Ultimately, he argued, the goal was to create more housing, not to be concerned with who captures all the profit.

Newsome pointed out that a planning process was not the only catalyst for increased land values. Even small actions, such as the purchase of one property, the announcement of a new commercial enterprise in the neighborhood, or even a CDC investing in a piece of land could get the speculative land market going.

Mallach argued that the value of planning to affected residents of neighborhoods and the city as a whole far outweighs the potential downside for land assembly. He noted, however, that regional plans such as the ones described for Envision Utah were meaningless unless they included a transparent process at a level that was meaningful to the people who would be affected, and unless they translated into specific projects in neighborhoods. Many such plans, he observed, were elite products, prepared and managed by outside experts. "It's not going to mean a great deal if it is not adopted by the people who make the decisions about zoning and project development. So somehow that community, whether it's local mayors, council members, county legislators, or others, has got to be part of the process." Waterman argued in favor of the merits of regional plans, having seen many successful examples, but reiterated the need for community engagement: "Unless you have engaged communities in those processes and taken to heart what people are thinking, it will be just as Allan has said—a vision that sits on a shelf gathering dust." Hughley noted the importance of inclusiveness in planning while reiterating the importance of a regional perspective in a city like Atlanta. He has observed a greater level of acceptance for a regional approach in that city.

Puentes argued that small-scale plans—namely, zoning changes in suburban communities—were more common triggers for land assembly activity. "In older suburban areas, where planning involves just updating the local zoning code, going from B2 to R3 and so forth, these changes trigger the land assembly activity we've been talking about."

Gray referred to examples of effective community-based participation in planning under previous mayoral administrations in Philadelphia. The city did not fund CDC projects unless they were part of a strategic plan created for the community. If viable, these plans were then adopted by the city. Gray's organization, Asociación De Puertorriqueños, completed \$56 million worth of development as part of this process, leveraging municipal funding for additional support. Philadelphia is using APM's current updated plan as a model. She added that under Mayor Street's Neighborhood Transformation Initiative, this integrated ground-up planning and funding approach has been broadened to include the for-profit development community.

Hughley described a comprehensive planning process developed by his organization for the Reynoldstown community in Atlanta, which was appropriated by private developers for use as a template in other neighborhoods, ultimately to the benefit of local communities. "Since it was a comprehensive neighborhood development plan, and it required some zoning changes, they had to come to the community to present, and we got a chance to shape the best possible use for the community." Boundary issues, he noted, serve to expand the scale.

Kortecamp argued for the value of long-term planning. He suggested that for plans to be effective, long-term objectives had to be kept in view. The point, he said, was not just to get development projects through with the lowest possible costs to the developer, but rather "to create market-price housing, to get moderate- and middle-income families into the city that will demand and support services and that will pay taxes. If we do that, there is no downside to good planning, even if that means that prices may go up somewhat."

Waterman addressed the question of long-term engagement with a cross-cultural example from Australia. Initially part of a planning team for the Port of Brisbane Corporation's port development project started in 1976, he was brought back many years later to create a "community consulting committee" and integrate it into a 20-year development process, possibly with several generations of participants. The committee members are responsible for identifying key players from their community and, most important, to be communicators

in the process. The participants are required to bring information to the table as well as disseminate it into their communities.

Beatley observed that one of the obstacles to the implementation of long-term initiatives is term limits. "You can have someone with political will, but will they be in office long enough to actually get something going? Will the next person have the political will?" Conversely, she noted a second obstacle to implementation—entrenched bureaucrats. She suggested that one issue that had to be considered in this context was how to institutionalize engagement and enforceable implementation over the long term. Kromer added that longevity was also an issue in community participation. Frequently, he noted, there is a key person in the community who helps to coordinate or lead the discussion. When that person dies, moves out, or is displaced by internal community power struggles, continuity is disrupted. Kromer recommended that ideally, city governments would continually be building links to communities. Given real-life circumstances, smart growth organizations and community development corporations are in a position to play a convening role, he said.

Kendrick requested that ULI begin to collect models for sustaining long-term planning and development processes.

Mallach raised the question of local capacity. In addition to the problem of term limits and turnover, he noted that in smaller cities and older first-ring suburbs, the pool of talent from which mayors, council members, and staff were drawn was extremely small. As a result, he argued, many such municipalities do not have the skills or the vision to deal with complex infill issues. "Encouraging more people to get involved in these lines of work as well as providing opportunities for decision makers in these smaller cities to be educated and to build their strengths will raise the quality of planning and decision making with respect to the issues we've discussed." Schilling expressed more optimism about the percentage of small-city officials capable of handling complex issues, but identified capacity building as an import focus area at ICMA. With many small-city councils being made up of part-time citizen planners, he noted that it is important to focus on reaching municipal and county managers, who are full-time staff.

Brown recommended that ULI adapt its Urban Plan education program, used in schools to teach students about planning, for use by city councils and planning staff in smaller communities.

McAvey referred to a successful planning effort that brought professional planning capabilities to smaller communities in Kane County, Illinois. Located 40 miles west of Chicago, the county is undergoing rapid growth. Within its boundaries lie 28 cities, villages, communities, and other incorporated areas. Many of these small communities do not have sufficient planning staff, elected officials, or planning commissioners to deal with emerging growth issues. The county now does a great deal of planning for the smaller communities, using consultants and its own staff. While the land in question is most often controlled and zoned by the smaller communities, the county has played a very effective role in coordinating, shaping, and encouraging smart growth planning approaches. They work in a flexible, adaptive manner that benefits both county goals and the communities.

Zachary Holl, program director for land strategies at the Bon Secours of Maryland Foundation, drew on his experience in the city of Baltimore both as a planner and in a nonprofit corporation to highlight the tension that exists between high-level planning and participation. “A challenge really is to balance the bottom-up with the top-down. Either one of those alone is really problematic.” He noted that because of a very strict emphasis on bottom-up planning in Baltimore, 750 to 800 community associations are fighting for the same municipal resources with no structure from the top. Because of a complex planning history, he noted, “There was a period of time when the city government was unwilling to come to the table and have a point of view about anything. But it’s absolutely essential in a place like Baltimore.” The city is facing chronic population loss and the management of vacant properties and boarded-up houses. When the city is left with bottom-up planning, he observed, every block and community group will recommend that houses in their area be rehabilitated and occupied. With Baltimore’s shrinking population and limited resources, this collective goal is impossible to achieve.

Holl asked fellow panelists to consider the question of allocating loss. “It’s one thing if you’re a growing city and a growing region to allocate growth to certain districts,” he said. “It’s another thing to allocate loss.” His organization in Baltimore is working with a coalition of 12 neighborhoods of 350 blocks and 9,000 properties to create a strategic plan that will identify and strengthen selected blocks. On blocks where population loss has already reached 50 percent, the best available alternative may be to demolish vacant buildings and turn them into green spaces. “A lot of community groups are struggling because of lack of the top-down,” he noted.

McAvey reiterated the important role of government in planning and growth decisions, and its responsibility to communicate with constituencies. “The government,” she said, “has abdicated its role in terms of balancing the needs of the community, the city, the county, and the larger region. The government has to have a voice at the table.”

Several forum panelists suggested municipal planning initiatives worth studying. Schilling noted the experience of San Diego, which began to update its strategic framework about three years ago. The city had already undertaken successful redevelopment downtown, and then turned its attention to the decaying first-ring suburbs built in the 1920s through the 1940s. Their chosen strategic approach was to create a “city of villages,” proposing village centers with walkable neighborhoods and revitalized commercial centers in individual suburban areas. Despite committed mayoral leadership, the initiative has suffered for lack of participation and buy-in from the private sector. “It’s still a work in progress.”

Pawlukiewicz highlighted the case of Arlington County, Virginia, an older suburb outside of Washington, D.C., The county has had 40 years of citizen participation on planning issues and has successfully redeveloped a decaying strip highway into a thriving mixed-use corridor. “They’ve had the political will to hold onto their vision and to see it implemented,” he noted. “Today, they’ve affected 5 percent of the county with high-density development and reaped enormous benefits and revenues for the county.” He pointed out that the five high-density development nodes designated by the county addressed the issue brought up by panelists about creating multiple opportunities for infill development. Cogan

observed that Arlington County residents gained confidence in the planning process by seeing good development. Schilling suggested that given Arlington’s unique demographics, how to replicate the county’s planning achievements is a challenging question.

Beatley brought attention to a problem concerning city council members in Arlington and other successful jurisdictions and community groups: affordable housing. “One of the things that perhaps they don’t plan well for is success. A lot of community development groups we work with don’t plan for success. So all of a sudden, it’s like, dang, it worked!”

Carter and Waterman brought focus back on the information database for planning. “It is a core planning instrument,” reiterated Waterman. Carter noted the work being done on development of land databases in Philadelphia through the Reinvestment Fund. Waterman highlighted innovative ways that Australian and German municipalities are financing the construction and maintenance of information databases by combining them with other city functions. “You don’t have to spend more. You just have to spin your dollar in another way.”

Focus on the Most Important Obstacles

McAvey facilitated a discussion of key issues and barriers that had emerged during the forum discussion. Topics that panelists wanted to see pursued in future programs and materials were captured on a flipchart and are listed below:

- Revamping the planning and zoning process;
- Doing more and better with less money (picking your battle, improved capacity);
- Typologies:
 - markets (weak markets, vacant and abandoned, stronger markets);
 - scale of project (from site to economic development);
 - kind of infill (level of density, reinforcement or transformation of use);
 - project entity (private, public/private, public);

- Legal obstacles and tools;
- Land banking;
- Continuum of finance within the development cycle;
- Innovative financing—pooling corporate tax credits (private resources);
- NIMBYism and community education;
- Planning at many scales—regional to site-specific (land assembly and planning tension, planning for success, updating);
- Sustaining leadership, both community and elected;
- Infrastructure (aging and decaying);
- Knowing one’s territory/context—knowledge is power (context, information databases, land market monitoring system);
- Continuing to seek federal funding;
- The importance of the state’s role—effective and responsive government;
- Education of the appraisal community;
- Real partnerships between profit and not-for-profit organizations.

McAvey noted how important the question of planning reform, specifically of the zoning and permitting process, was. “You might want flexibility in zoning, or from zoning. There are a number of things we may want to consider in relation to this issue.” She highlighted the particular potential of corporate tax credits for land assembly, querying whether “there is something we can do to encourage the private sector to participate in land banking. It’s really getting private investors to pool funds for land banking.” She emphasized the importance of recognizing that land assembly will be undertaken in a climate of fiscal constraint. “There will be fewer financial resources coming out of the government side for land assembly. So how can we do more with fewer dollars?”

McAvey and several panelists noted the usefulness of the typologies proposed by Mallach for considering land assembly and infill issues. Schilling suggested that the typology could be useful because “some of the technical issues and specific strategies and tools we’ve been talking about will change depending on the typology.”

Cogan built on the theme of zoning reform, citing the example of a proactive municipal permitting process. A county executive in Montgomery County designated a downtown redevelopment zone for suburban Silver Spring, and assigned permit technicians to support developers through the process. This was very effective.

Cogan and Mallach expanded on issues for consideration under the theme of land banking. Cogan raised a cautionary flag based on experience with intransigent public agencies that refused to let go of land for transit-oriented development. Recognizing that public land banking could be a powerful tool, she also noted, “If the government is in charge of land banking, there needs to be some incentive to move the property.” Mallach identified the opposite problem in the case of municipal redevelopment agencies, which may flip land too readily, but reiterated that “in the right hands with the tight ground rules, it is a powerful tool.”

Kortecamp expanded on the theme of proper scale for planning, noting that affordable housing had to be addressed at the proper scale. “In Maryland, one of the biggest problems we’re having right now is the cost of land and the fact that workforce families are being priced out.”

Puentes noted that particular attention needs to be paid to the problems of older suburbs in the area of capacity building. “What happens in the older suburbs is just fundamentally different than what happens in the center cities,” he noted. He also emphasized the importance of understanding the context of vacant properties, whether economically or geographically, and regional differences.

Carter noted that along with capacity building for local reform, “doing more and better with less” also meant strategic intervention, especially for older cities. “You have to pick your battles. It’s a triage decision.” He also highlighted the significance of scale. “One of the problems that we’re facing around the country is that CDCs, as well meaning as they are, and as hardworking as they are, and as professional as they’re becoming, are still dealing with projects that aren’t large enough to justify the land assembly costs, the rezoning, and all those things that have to happen. So one of the things we need to talk about with doing more for less is picking the battles and having successful projects, and not just a whole bunch of mediocre ones. That’s an issue that each of the CDCs and each city in these stressed neighborhoods have to deal with every day.”

Stromberg expanded on the theme of land monitoring systems, emphasizing that while such systems are an excellent idea, “in practice it takes a strong local commitment to even begin to think about developing a system and maintaining it.” HUD’s Office of Policy Development and Research is in the process of going through a planning feasibility phase and has identified three to five communities around the country in which to launch a land market monitoring system. In a few years, this initiative may provide good data about land use and housing trends. Beatley suggested that, instead of reallocating CDBG and HOME funds, HUD consider funding of a number of community pilot programs to deal with land assembly issues.

Holl urged that decreasing federal funds “not become a completely self-fulfilling prophecy.” He suggested that federal funding for a range of land assembly issues could be appropriate. “This particular issue is one that has things to offer to folks on both sides of the political aisle—getting abandoned property back into productive use that benefits everyone. Let’s keep the idea of seeking additional federal resources on the table.” Gray emphasized the need for better funding for depopulating cities that are faced with the daunting task of redevelopment. Stromberg acknowledged the funding needs of such cities, but cautioned that a change in the funding allocation formula for competing city funding was unlikely.

McAvey brought to light an interesting statistic. Many cities, despite the fact that they have lost population, now have a greater number of households because of a reduced number of people in each household. Kendrick added the demographic information of 65 million additional people in the United States in the coming 20 years. He noted that emerging household types and lifestyles are demonstrably different from those of previous generations. “The context will be wildly different for all the things we are working on and that we’ve been discussing.”

Echeverria emphasized the need to look at the dynamics of planning and land acquisition. “I think there are real tensions between a proactive site-specific planning process and cheap and efficient land assembly. We shouldn’t gloss it over.”

Bailey built on the theme of states' roles in land reform, noting, "In land banking, you typically have to have state legislation to change the time frame for tax foreclosure to actually foreclose on a house, which is how Michigan did it so well with Genesee County, which was state legislation. The government has got to play a big role in some of these places." Waterman added that effective government also means responsive government. "What I've been hearing today is that possibly state and local government is not responsive enough to these needs and issues."

Humphrey recommended that when it comes to capacity building and education, appraisers should be brought into the process. She suggested that creation of training for valuation for land assembly or brownfields through the Appraisal Institute is worth consideration. Schilling noted that several universities are offering training in this area. He also highlighted the important role that LISC and the Enterprise Foundation are playing in capacity building.

Hughley emphasized the need to think about meaningful partnerships between the for-profit and nonprofit sectors. "Not just something you do on the surface," he emphasized, "but something that's truly explored in terms of benefits to both. There's a lot that can be done."

Case Studies

McAvey and forum participants concluded the day with a consideration of instructive case studies for further exploration of land assembly and infill development issues. The following were identified as good starting points:

- Menomonee Valley, Milwaukee, Wisconsin
Menomonee Valley Partnership, industrial redevelopment for jobs, successful community-based planning, longevity.
- East Baltimore, Maryland
Top/down and bottom/up, planning process, reconciliation of community and institution, long term, vacant property issues.
- Phoenix, Arizona
Good scattered site infill process, 1960s neighborhoods, zoning.
- Tucson, Arizona Sabre Team
Nuisance and blight abatement, local government, breaking down interdepartmental barriers.
- Arlington, Virginia
Longevity, successful citizen participation, density, effective infill development, corridor/nodes, affordable housing, land assembly.
- Atlanta, Georgia
Land banking challenges—compare experience, eminent domain, single-family infill.
- Cleveland, Ohio, Neighborhood Progress, Inc.
Financial tools to support CDC infill projects, corporate and foundation support.
- Michigan and New Jersey
Legislative reform models.
- State University of New York at Buffalo
Reinforcing existing neighborhoods, design standards for small-scale infill to enhance neighborhoods.
- Norfolk, Virginia
Citywide pattern book, vacant land redevelopment.
- Cleveland Heights, Illinois
Older suburb issues.

- Ferndale, Michigan
Older suburb issues.
- Brooklyn Park, Minnesota
Older suburb issues.
- Chicago, Illinois
Design high-quality, successful infill.
- Denver, Colorado
Stapleton, city process for major development.
- Neighborhood Knowledge Los Angeles (NKLA)
Web-based assessment system, Fannie Mae.
- Chris Leinberger in Albuquerque and Pittsburgh
Patient money land investment.
- Minneapolis, Minnesota–MNIS
Database system, neighborhood and CDC applications.
- Philadelphia Neighborhood Transformation Initiative
Scale intervention, financing, local government role.
- Richmond Virginia—Neighborhoods in Bloom
Successful redevelopment of vacant land in neighborhoods.
- Silver Spring, Maryland
Progressive zoning for redevelopment, zoning reform.
- San Diego, California
City of Villages, inner-ring suburbs, implementation challenges, participation.

■ Kane County, Illinois
Doing more with less, effective planning without control, building local capacity, regional and local engagement.

■ Australia, Netherlands, Bavaria
Public initiatives.

Case study type: eminent domain issues—good and bad practices.

Case study type: projects that reinforce existing neighborhoods.

Case study type: experience from older suburbs.

Maureen McAvey and Michael Pawlukiewicz closed the forum with thanks to participants and a request to keep ideas going by E-mail.

Forum Agenda

- 8:00–8:30 a.m. **Coffee, Continental Breakfast**
- 8:30–9:00 a.m. **Welcome and Introductions**
Chair: Maureen McAvey, *Senior Resident Fellow, ULI—the Urban Land Institute, Washington, D.C.*
- 9:00–10:15 a.m. **Overview and Legislative and Regulatory Issues**
State and local laws and policies that regulate land assembly practices.
Introductory Speaker: John Kromer, *Fels Institute of Government, Philadelphia, Pennsylvania*
Identify legislative and regulatory obstacles and solutions.
Discussion
- 10:15–11:30 a.m. **Legal Issues**
Takings, due process, and the use of eminent domain
Introductory Speaker: John Echeverria, *Environmental Policy Project, Georgetown University Law Center, Washington, D.C.*
Identify obstacles and solutions in the legal realm.
Discussion
- 11:30–12:30 p.m. **Financing Issues**
Finding Capital; Allocating Risk; Public/Private Partnerships
Introductory Speaker: Linda G. Davenport, *Deputy Director, Community Development Financial Institutions Fund, Washington, D.C.*
Discussion to identify obstacles and solutions
- 12:30–1:30 p.m. **Working Lunch: Execution Issues**
Discussion to identify obstacles to implementation and their solutions
- 1:30–2:45 p.m. **Planning X**
Treating land even abandoned and/or blighted property—as an asset, not a liability;
Understanding market realities.
Introductory Speaker: Elizabeth Humphrey, *Executive Director, Growth Management Leadership Alliance, Washington, D.C.*
Discussion to identify planning obstacles and possible solutions
- 2:45–3:45 p.m. **Focus on the Most Important Obstacles**
Facilitated discussion and work session to focus on the obstacles with their solutions that will actually benefit many cities.
Facilitator: Maureen McAvey, *Chair*
- 3:45–4:00 p.m. **Identify Possible Case Studies**
- 4:00 p.m. **Adjourn**

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